

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

AUG 29 2007

COURT OF APPEALS  
DIVISION TWO

KASSANDRA K.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY, HERARDO  
O., IZAC O., and JOSHUA O.,

Appellees.

2 CA-JV 2007-0024  
DEPARTMENT A

MEMORANDUM DECISION

Not for Publication  
Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD200500089

Honorable Joseph R. Georgini, Judge

AFFIRMED

Lynn T. Hamilton

Mesa  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Dawn R. Williams

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

H O W A R D, Presiding Judge.

¶1           Kassandra K. challenges the juvenile court's order terminating her parental rights to her children Herardo, Izac, and Joshua O. based on mental illness, mental

deficiency, or a history of chronic substance abuse, A.R.S. § 8-533(B)(3), nine-month out-of-home placement, § 8-533(B)(8)(a), and fifteen-month out-of-home placement, § 8-533(B)(8)(b).<sup>1</sup> Kassandra maintains there was insufficient evidence to support the court's order under any of these grounds.

¶2 In May 2005, after receiving the second of two reports that the children were being neglected, Child Protective Services (CPS) removed the children, then ages six years, three years, and ten months, from the home of the maternal grandmother, with whom Kassandra and the children were living. The Arizona Department of Economic Security (ADES) filed a dependency petition shortly thereafter, and in August 2005, the juvenile court adjudicated the children dependent after the mother failed to appear for the initial dependency hearing. In October 2006, ADES filed a motion to terminate Kassandra's parental rights. After a two-day bench trial, the juvenile court terminated Kassandra's parental rights pursuant to § 8-533(B)(3), (B)(8)(a) and (b).

¶3 Section 8-533(B)(8)(b) provides, in relevant part, that the parent-child relationship may be terminated if the evidence establishes

[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances which cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

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<sup>1</sup>Kassandra gave birth to Serena in February 2006. Her rights to this child were also terminated, but Kassandra did not appeal from that order.

This ground, like any of the other grounds for severance set forth in the statute, must be established by clear and convincing evidence. *See* A.R.S. § 8-863(B); *see also Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find by a preponderance of the evidence that termination of the parent-child relationship is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶4 We will not disturb an order terminating parental rights so long as there is reasonable evidence to support the factual findings upon which the order is based. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We will affirm the court's order "unless the order is clearly erroneous." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶5 Following the words of the statute, the juvenile court found and concluded, *inter alia*, based on evidence the court characterized as clear and convincing,

[t]he children have been in an out-of-home placement for a cumulative period of fifteen months or longer pursuant to court order. The parents have been unable to remedy the circumstances which caused the children to be in an out-of-home placement. There is a substantial likelihood that the parents would not be capable of exercising proper effective parental care and control in the near future.

¶6 As to this ground, Kassandra contends there was insufficient evidence to support the juvenile court's finding that she "was unable to discharge her parental responsibilities. There was no testimony that [she] was [unable] to provide for the necessities and emotional needs of her children." Conceding she "had a tenacious drug

addiction,” Kassandra argues the mere fact that she is a substance abuser does not, per se, render her incapable of caring for her children, and she claims ADES did not establish that her substance abuse rendered her incapable of doing so. We disagree.

¶7 An abundance of evidence established that Kassandra had seriously neglected the children before they were removed from her custody. In March 2004, CPS received its first report of neglect after Izac and Herardo, who suffers from Down Syndrome, were found at a school about a quarter mile from their home, wearing only diapers. CPS received another report in May, when Herardo was found wandering in a park, naked. Herardo had been missing for fifteen hours by the time CPS contacted the maternal grandmother, and no one had noticed he was gone. ADES subsequently took all three children into custody.

¶8 The initial case plan goal was reunification, and ADES outlined a variety of services designed to achieve that goal. At the end of August, Kassandra was psychologically evaluated by Dr. Daniel Juliano, who diagnosed her as suffering from a major depressive episode. She admitted to Juliano that she had used methamphetamine in the past but insisted she no longer did. He recommended that she receive therapy and that she be psychiatrically evaluated to rule out possible somaticization disorder and personality disorder with borderline and paranoid features. Although Juliano felt it would take at least eight months to determine if reunification was a realistic goal and although he viewed her prognosis as guarded, he saw reunification as possible if Kassandra was committed to using the services provided.

¶9 During the ensuing year, beginning in July 2005, Kassandra complied with some portions of the case plan but was never fully compliant. Although it is not necessary for a parent to “completely overcome [his or her] difficulties” within the period that the child is out of the home pursuant to a court order, the parent is required to “make appreciable, good faith efforts to comply with remedial programs outlined by ADES.” *In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). Perhaps most important was the fact that Kassandra had a poor record of submitting to urinalysis. In June 2006, she tested positive for methamphetamine. She tested positive again in November 2006 after providing a urine sample at a pretrial conference pursuant to a court order.

¶10 The caseworker characterized Kassandra’s participation in counseling services as “very minimal.” Kassandra never participated in special services for Herardo provided by the Department for Developmental Disabilities, although she was invited to do so. She lived in motels and with relatives during the first year of the dependency and thus was not able to provide suitable housing for herself and the children. It appears that she was arrested for domestic violence involving the children’s father in September 2005; she did not complete a court-ordered domestic violence course required as a result of that incident, and she moved back in with the father.

¶11 Kassandra was never able to provide stable housing and never demonstrated she could satisfy the special needs of all three of her children. At no point during the dependency did she improve to the point that her caseworker believed she could care for the

children and provide them with a safe living environment. The caseworker testified that Kassandra is “unable to provide for these children,” especially in light of their particular needs.

¶12 Finally, Dr. Carlos Vega evaluated Kassandra in September 2006 and concluded she had a personality disorder with antisocial features and possible dependence on methamphetamine and alcohol. He viewed her as completely lacking in insight and unable to make the changes necessary for her to even begin to function as a parent. He did not believe she could parent the children in the foreseeable future.

¶13 Kassandra contends ADES intentionally failed to provide Dr. Vega with positive information about her participation in certain services, such as parenting classes, thereby distorting his view of her and the likelihood that she could effectively parent her children. But she raises this argument only in challenging the portion of the juvenile court’s order terminating her rights based on mental illness, mental deficiency, or chronic substance abuse. Because we find sufficient evidence to support the court’s termination of her parental rights based on fifteen-month out-of-home placement, we need not address her arguments concerning other grounds. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”). Nonetheless, because of the overlapping nature of the out-of-home placement and substance abuse and mental health grounds, we have considered the argument and reject it.

¶14 Dr. Vega was subject to cross-examination, and the juvenile court was well aware of the extent to which Kassandra did fulfill certain requirements of the case plan. It was for the juvenile court to determine how much weight to give Vega’s testimony, if—as Kassandra contends—he had not been provided with or taken into consideration those portions of the case plan with which she had complied. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207 (“[W]e do not re-weigh the evidence on review.”). Moreover, Vega testified that, even if she had complied with a number of the case plan requirements, that would not change his opinion that she was not then and would not be in the foreseeable future capable of parenting her children.

¶15 We affirm the juvenile court’s order terminating Kassandra’s parental rights to Herardo, Izac, and Joshua.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge